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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re K.S., a Person Coming Under the
Juvenile Court Law.

HUMBOLDT COUNTY DEPARTMENT
OF SOCIAL SERVICES,

Plaintiff and Respondent,

v.

DAISY R.,

Defendant and Appellant.

A155391

(Humboldt County
Super. Ct. No. 170052)

This juvenile dependency matter involves the appeal of mother Daisy R. from two orders, one a jurisdictional order sustaining a Welfare and Institutions Code section 300 petition as to her daughter K.S., the other a dispositional order ordering reunification services for Daisy. She asserts the following four errors: (1) the juvenile court's jurisdictional findings are unsupported by substantial evidence; (2) she received ineffective assistance of counsel; (3) because there was no basis for jurisdiction, the dispositional order was improper; and (4) there was inadequate compliance with the notice requirements of Indian Child Welfare Act (25 U.S.C. §§ 1901–1963) (ICWA). We conclude there is no merit to these challenges. We thus affirm the jurisdictional and dispositional orders.

BACKGROUND

The Family and the Petition

Daisy R. is the mother of K.S., who was five years old at the time this proceeding commenced in May 2018. Daisy is involved in a relationship with William B., a relationship whose violence was a contributing factor to a dependency proceeding involving Daisy and K.S. in 2017. That proceeding terminated in September 2017, in part due to Daisy having obtained a domestic violence restraining order against William and representing that she no longer had contact with him. Despite that restraining order, she has continued her relationship with William.¹

Following termination of the 2017 proceeding, the Humboldt County Department of Social Services (Department) received multiple additional referrals concerning K.S., including one on March 16, 2018 that reported K.S. and Daisy had been “couch-surfing with various friends,” and while they were sitting on the steps of the home where they were staying, Daisy put a blanket over her head and “was shooting up drugs underneath the blanket.” After investigating the family’s circumstances, on May 3, 2018, the Department obtained a protective custody warrant for K.S., and she was taken into protective custody the following day.

On May 8, the Department filed a Welfare and Institutions Code section 300 petition,² alleging juvenile court jurisdiction over K.S. on four grounds. First, it alleged K.S. suffered, or was at a substantial risk of suffering, serious physical harm inflicted non-accidentally by Daisy due to her substance abuse issues and her engagement in domestic violence with William. (§ 300, subd. (a).)

Second, the petition alleged K.S. suffered, or was at a substantial risk of suffering, serious physical harm or illness due to Daisy’s failure to adequately supervise, protect, and provide for her. (§ 300, subd. (b).) The supporting factual allegations included the

¹ When this proceeding commenced, K.S.’s father lived out of state and was not involved in her life. He has had no involvement in this proceeding, and we omit facts concerning him as they are irrelevant to the issues Daisy raises on appeal.

² All undesignated statutory references are to the Welfare and Institutions Code.

following: (1) they had lived in multiple places, including a car, that were piled with debris and had drug paraphernalia within K.S.'s reach; (2) Daisy and William engaged in domestic violence, K.S. had physically intervened in the violence between them, and Daisy had a restraining order against William but continued to reside with him; (3) Daisy used methamphetamine and marijuana; did not ensure K.S.'s regular attendance at school; and had injected drugs in K.S.'s presence, driven under the influence of methamphetamine while K.S. was unrestrained in the car, left drug paraphernalia in K.S.'s presence, and left K.S. in the care of William, who abused drugs and was the subject of a restraining order; and (4) K.S.'s father had made no plan for her care despite knowing of Daisy's substance abuse and domestic violence issues.

Third, the petition alleged K.S. was suffering, or was at risk of suffering, serious emotional damage as a result of Daisy's engagement in domestic violence, continued involvement with William despite the restraining order, and failure to protect her from William. (§ 300, subd. (c).)

Fourth, the petition alleged K.S. had been left without any provision for support, as her father lived out of state and did not provide for her. (§ 300, subd. (g).)

Detention

In a May 8, 2018 detention report, the Department informed the court that ICWA did not apply to this family, as found in two previous dependency proceedings: "The Court found during a dependency case regarding the mother as a minor that ICWA did not apply as to the mother. During a 2017 dependency case regarding [K.S.], the mother reported that she may have Yurok, Cherokee, and/or Blackfoot[t] ancestry. In the Department's initial Disposition report dated 06/27/2017, it was recommended that the Court find that ICWA does not apply. It was reported that ICWA-030s had been completed with all known information and sent on 04/24/2017; the Eastern Band of Cherokee Indians and the Yurok Tribe both reported that [K.S.] is not eligible for membership, and the other Tribes had not responded." The Department also advised that K.S.'s father had reported in the prior proceeding that he did not have Native American ancestry.

At a May 9 detention hearing, the court found ICWA did not apply “because the findings the last time were pretty conclusive it looks like” The court added that “if there is any new information, we encourage folks to get that to the Court for the next date,” also ordering Daisy to complete the ICWA-020 form.

The court ordered K.S. detained, further ordering the Department to provide services to Daisy.

Jurisdiction Report

The Department’s May 21 jurisdiction report detailed the family’s prior child welfare history, the events that triggered this proceeding, and what the Department learned during its investigation into the allegations. Specifically:

K.S. was previously removed from Daisy’s care on March 15, 2017 due to a domestic violence incident between Daisy and William in which K.S. physically intervened to prevent William from hurting her mother. The family was living in a dilapidated house with broken windows and a drooping, leaking ceiling on which mushrooms were growing. The inside was so littered with belongings that pathways were necessary to move from one room to the next, and the floor of a bedroom K.S. and Daisy shared was not visible beneath the piles of clutter and rubbish. K.S. was returned to Daisy’s care the following day under a safety plan that required them to stay in a motel until William could be removed from the home, the landlord had repaired the roof, and Daisy had cleaned the residence. Daisy obtained a restraining order against William, and the case was closed on September 6, 2017, in part based on Daisy’s representation that she no longer had contact with William.

After closure of that case, the Department received five additional referrals concerning K.S.:

(1) On October 16, 2017, it received a general neglect referral alleging that Daisy and K.S. were living in hazardous conditions and K.S. was again witnessing domestic violence. The referring party described deplorable living conditions and marijuana plants within K.S.’s reach. Outside was littered with garbage, including hypodermic needles, and K.S. was seen playing shoeless in the garbage. It was believed she was not going to

school, and on several occasions, she had gone to her neighbor's house because she could not find her mother. The reporting party also said Daisy and William had recently been seen arguing in the road and William continued to live in the home despite the restraining order against him.

(2) A November 6 referral alleged general neglect of K.S., the reporting party again describing a house full of garbage with no electricity or running water. The reporting party said William was still living there despite the restraining order and K.S. was very dirty and not attending school.

(3) A December 18 referral alleged severe neglect of K.S. As described in the jurisdiction report, "The mother was pulled over by law enforcement due to an expired registration. The vehicle was described as being filled from floor to roof with trash. The responding officer stated 'I didn't think anyone else could be in the vehicle, because there was so much trash piled up inside, and the mother mentioned her daughter.' 'I looked in the back and the child was under a bunch of garbage.' The child and a dog were laying in the back seat without restraints or a child seat. The mother indicated she and the child resided in the car and asked that the vehicle not be impounded. The mother and child were picked up by the maternal grandfather" The investigating social worker was subsequently unable to locate them.

(4) On March 13, 2018, a referral alleged general neglect and emotional abuse of K.S. The reporting party stated that K.S. appeared hungry, unkempt, unbathed, tired, sick, and disoriented. She and Daisy had been living in a car but were at that time staying with friends. They had been observed walking down the side of a highway, with K.S. trailing 15 feet behind Daisy. K.S. had missed 19 of 39 days of school, and she was afraid to talk to school staff because Daisy told her not to.

(5) Lastly, the Department received the March 16 referral that Daisy and K.S. had been "couch-surfing with various friends" and recently were on the steps of a home where they had been staying when Daisy pulled a blanket over her head and shot up underneath the blanket.

Following receipt of the March 16 referral, social worker Richelle Arche investigated the allegations, detailing the following findings in the jurisdiction report:

On March 22, Arche went to K.S.'s school and met with staff member Desiree Cather and principal Matt Malkus. They reported that K.S. had been enrolled since December 2017 but her attendance was inconsistent. A woman named Ashley, who was the parent of another child, helped get K.S. to school but could not always find where she and her mother were staying. Ashley helped care for K.S., making sure she bathed, ate, and had clean clothes.

Arche spoke with K.S., who said her mother told her not to talk to social workers because they would take her away again. She said they were living in a house with other people, and she and her mother shared a room and a bed. Asked about food, K.S. said her mother made her ramen soup and she sometimes helped. She denied seeing needles or her mother ever act strangely. Arche told K.S. she needed to speak to her mother, but K.S. could not explain where they were staying and said her mother did not have a phone. K.S. appeared clean, appropriately dressed, and in good spirits.

On March 26, Arche received a phone call from Ashley S., who said she had been helping with K.S. for about a month and a half. She confirmed she was giving K.S. rides to school and providing her clean clothes, food, and showers. Ashley often had to go looking for K.S. because she and her mother moved frequently, leaving one place and walking around town until they found another place to stay, which recently had been a house on Anderson Avenue. Ashley often found K.S. dirty, hungry, smelly, and wearing ill-fitting clothes, and her teeth were rotten. Daisy had recently been resisting her help, and that morning when Ashley went to pick up K.S., Daisy told her K.S. had an earache and was not going to school.

Later that day, Ashley again called Arche and advised that Daisy had just called and told her she had sent K.S. to live with her father in Oregon. Ashley had contacted the sheriff's department and requested a welfare check.

On March 29, Ashley informed Arche that she had heard Daisy and K.S. were staying at the house on Anderson Avenue. Arche contacted the sheriff's office and

requested a welfare check. A deputy sheriff later told Arche that K.S. had been contacted at the home and was being fed at that time, and it was reported that Daisy and K.S. would be moving soon.

On April 2, school employee Cather informed Arche that K.S. had not returned to school since March 22, the day Arche spoke with her at school. The school had been unable to contact Daisy since that time, and they were concerned she was hiding K.S.

On April 11, Arche went to the Anderson Avenue house, but the driveway was blocked and posted with “No Trespassing” signs.

On April 27, Arche received police reports documenting multiple contacts between Daisy and law enforcement, including the following seven incidents concerning Daisy, K.S., and William:

(1) On June 15, 2017, Officer Henderson responded to a report that William was seen at the property where Daisy and K.S. were staying despite the restraining order against him.

(2) On August 27, Officer Froeming responded to a report by Daisy’s landlord of a verbal altercation involving Daisy. The landlord said Daisy and K.S. had been living at the property, which had no running water or electricity and had “trash piles of rotten food and miscellaneous household goods about three feet high on all sides of the residence.” K.S. had been seen playing in trash that contained hypodermic needles. According to the officer, the house was piled with clothes and garbage, with paths leading from one room to the next. The kitchen sink was “overflowing with dirty dishes and flies all around,” and the refrigerator did not work since there was no electricity. Daisy told the officer the trash was there because they were moving out. The officer told her to have K.S. stay elsewhere while she cleaned the house.

(3) On November 21, Officer Aponte responded to a report of suspicious vehicles and people at the residence where Daisy and K.S. were staying. The officer made contact with William and Daisy and arrested William for violating the restraining order. They told the officer that they were trying to rescind the order because they were engaged and planned to get married.

(4) On November 25, Officer Cress responded to a report of a vehicle on the side of the road. Daisy, whom the officer recognized from prior police contacts, was the driver of the car, which was unregistered and “full of junk” and had a broken taillight. Daisy, who was agitated, evasive, and speaking quickly, claimed she had just left a casino that she had gone to with a friend. She also said she had smoked marijuana two hours earlier, but the officer believed she had used methamphetamine. She initially told the officer K.S. was with a babysitter, but the officer then noticed K.S. asleep in the middle of clothing in the cargo area of the car, unrestrained by a car seat or seatbelt. Officer Cress had Daisy perform a field sobriety test and determined she was under the influence of a substance but not to the level of criminal impairment. He cited her for driving with an expired license, expired registration, failure to produce insurance, and failure to restrain K.S. in the car, and her father picked them up. The officer went to the casino and contacted Daisy’s friend, who was in possession of methamphetamine and confirmed she had smoked some with Daisy.

(5) On December 31, Officer Selby responded to a report of a woman verbally abusing and neglecting her young child at a park. The officer made contact with Daisy, who refused to speak with the officer without an attorney. Officer Selby noted K.S. was not wearing shoes but appeared healthy.

(6) On January 4, 2018, Officer Lamb responded to a report of a young child who appeared to be “dirty, unkempt, scraggly, and covered in mud” The reporting party observed an adult female walk away from the residence with a child, telling the child to listen to her because she was her mother. Officer Lamb found Daisy in a shed at the residence. Daisy claimed K.S. was with Daisy’s father but she did not know where he lived or how to contact him. Officer Lamb was concerned about K.S.’s wellbeing given the initial report, and he believed Daisy was concealing her whereabouts.

(7) On March 17, Officer Stallworth responded to a report of a woman with purple hair (apparently Daisy) walking along Highway 101 with a small child. The officer reported that he had had a number of neglect calls involving Daisy and K.S. Deputy Hwang was also present and reported that K.S. was walking five feet behind

Daisy on the side of the freeway. Daisy was hostile towards the officers and refused to engage in a conversation with them. Officer Stallworth believed she was under the influence of a stimulant. Due to this and past contacts with Daisy and K.S., he feared for K.S.'s safety. He contacted dispatch, who discovered multiple calls over the proceeding few weeks regarding a purple-haired woman walking on the side of the busy roadway. He "did not believe he had exigency to take [K.S.] into protective custody," but he concluded his report with this: " 'I believe [Daisy] will continue to use narcotics and place her and her child into potentially dangerous situations. I have a severe concern for the safety of [K.S.], however, I have not observed a full violation of the penal code sections covering child abuse or endangerment. Based on my past contacts with [Daisy] I believe that if her narcotics use continues, her child will be subjected to far worse than being filthy[,] underdressed, and obligated to endure the questionable company of her sometime houseless mother.' "

In light of its investigation, on May 3, the Department obtained a protective custody warrant authorizing the removal of K.S. from Daisy's care. The next day, Arche and another social worker went to K.S.'s school and were informed she had not been there since March 22. They then met Deputy Stallworth at the Anderson Avenue house and were told by the property owner that Daisy and K.S. were no longer staying there, were sleeping in their car and spending time with William, and might be in Eureka.

That same day, May 4, with the help of the Arcata Police Department, the social workers were able to locate the family at a motel in Arcata. William answered the motel room door and stepped outside, with K.S. following behind him. He said Daisy was walking the dogs and would be right back. K.S. was wearing dirty clothes and had bare, dirty feet. Her hair was "neatly buzzed on the sides, with longer hair on top, except for chunks of hair cut much shorter." William said K.S. had gotten a hold of some hair cutters. He then pointed out Daisy's car pulling up across the street, but when Daisy spotted the social workers and police officers, she abruptly drove off. K.S. was taken into protective custody.

K.S. told Arche that her mother and William smoked cigarettes and weed, which she described as “something green that gets rolled up.” She also said her mother used “hash” and “ ‘something white,’ ” and there was hash in the motel room. K.S. said she did not like social workers because they take kids away and her mother told her to never speak to them. Asked about her haircut, K.S. said she cut it with “ ‘trimming scissors’ ” that are used to trim weed.

Later that day, Daisy appeared at the Department. She told Arche she was being harassed by law enforcement “for being different and for raising her child to be free and like a ‘mountain child.’ ” She claimed they had a safe place to live, she took K.S. to North Country Clinic for medical care, and K.S. had an appointment for dental surgery. Her speech was very rapid but she denied taking any medication, although she admitted smoking marijuana.

On May 7, Arche spoke with K.S.’s foster parent, who reported that, according to K.S., her hair was cut short on the sides because she kept tucking it behind her ears so her “mom and ‘dad’ ” (William) cut it with clippers. The foster parent said K.S. had seen William “use drugs that are white; sometimes they look like rocks, and other times it looks like sugar. She has seen him use needles for the drugs. Her mom uses the purple drugs. When [William] gets mad, he shakes her.”

At the May 9 detention hearing, the court had ordered a hair follicle test for Daisy at her request. The next day, Arche sent a text message to Daisy to inform her a test had been scheduled for the following day, May 11. Daisy did not attend the appointment. K.S. was also scheduled for a hair follicle test, but the results were not available at the time of the jurisdiction report.

A June 12 addendum to the jurisdiction report updated the parents’ criminal history, which showed that Daisy had 17 arrests going back to 2003.

Contested Jurisdiction Hearing

The matter came on for a contested jurisdiction hearing on June 13. Daisy was present with her attorney, but because they had not yet had an opportunity to meet, the matter was continued.

At the continued hearing on June 15, Daisy’s counsel advised the court that although Daisy had intended to testify, she was not present, adding, “[Y]esterday, in my opinion, she was in pretty bad shape emotionally and mentally, so I’m not surprised that she’s not here. [¶] I do—have been told by her that she is now living in her car, so that may be an issue, as well, for her.” With that, her counsel “just object[ed] and submit[ted]”

The court sustained the petition, found K.S. to be a child described by subdivisions (a), (b), (c), and (g) of section 300, and adopted the Department’s findings and orders.

Disposition

The Department’s June 27 disposition report recommended that the court declare K.S. a dependent and order reunification services for Daisy. In an addendum, the Department also recommended that the court limit Daisy’s educational decision-making rights and grant them to K.S.’s foster parents. In support, it advised that K.S.’s school was recommending she repeat kindergarten and the social worker and school staff had attempted to communicate with Daisy regarding this issue, but she was unwilling to engage in a conversation and had failed to complete the necessary paperwork.

On July 30, the court held a contested disposition hearing. Again, Daisy was not in attendance, and her counsel represented that she had not had any contact with her “for several weeks.” Counsel was of the opinion “that this is as good as it’s going to get,” and she submitted.

With that, the court declared K.S. a dependent of the juvenile court, ordered family reunification services for Daisy, adopted the Department’s proposed case plan, and granted educational decision-making authority to the foster parents.

Daisy filed a timely appeal.

DISCUSSION

The Court’s Jurisdictional Order Is Supported By Substantial Evidence

In the first of four arguments, Daisy contends the court’s finding that K.S. came within the jurisdiction of the juvenile court was unsupported by substantial evidence. This argument is without merit.

In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings, we review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence supporting the court's findings. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924; *In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.) "In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court" (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

"When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence." (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; accord, *In re Jonathan B.* (2015) 235 Cal.App.4th 115, 119.) Thus, while the juvenile court here sustained the section 300, subdivision (a), (b), and (c) allegations as to Daisy, we need only find substantial evidence supporting jurisdiction under one subdivision in order to affirm the court's jurisdictional order. We easily find substantial evidence supporting the allegation that K.S. was at a substantial risk of suffering serious physical harm or illness due to Daisy's failure or inability to protect her within the meaning of section 300, subdivision (b).

Perhaps most significant is the evidence of Daisy's drug use. According to K.S.'s foster parent, K.S. said she had seen her mother use purple drugs, while William used drugs that were white, both in rock form and what looked like sugar, and that he used needles. K.S. told Arche that her mother and William smoked weed and that her mother also used "hash" and " 'something white,' " and she described cutting her hair with scissors that are used to trim weed. While a parent's drug use alone does not automatically constitute a ground for jurisdiction (see, e.g., *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003), when the child is under six years of age, as was K.S., the parent's drug use is prima facie evidence of the parent's inability to provide regular care

resulting in a substantial risk of harm to the child. (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1385; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1220; *In re Drake M.* (2012) 211 Cal.App.4th 754, 767.)

Multiple police officers not only corroborated the evidence of Daisy's drug use, but also provided evidence that her drug use was in fact putting K.S. at a substantial risk of serious harm. Officer Cress reported that when he found Daisy and K.S. in a car on the side of the road, Daisy was agitated, evasive, and speaking quickly, and he believed she was under the influence of methamphetamine, which he confirmed by speaking with her friend who said the two had used methamphetamine that evening. Officer Stallworth located Daisy and K.S. while they were walking along the side of a busy highway, as they had apparently done a number of other times, and he, too, believed Daisy was under the influence of a stimulant. On these two occasions, Daisy put K.S. in harm's way, one time driving with her unrestrained in the car,³ the other time walking along the side of a freeway as apparently was their regular practice. While Daisy dismisses the officers' opinions of her drug use as "speculative" and "not supported by anything more substantial than that mother seemed agitated and spoke quickly," these were the educated opinions of trained police officers.

Daisy also places undue weight on the facts that Officer Cress administered a field sobriety test and concluded her ability to operate a motor vehicle was not criminally impaired, while Officer Stallworth reported that he had not observed neglect or abuse that constituted a violation of the Penal Code. The fact that her conduct during those two incidents may not have been criminal did not preclude a conclusion that her drug use was placing K.S. at a substantial risk of harm. "Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing [citations], the court need not wait until a child is seriously abused or injured to assume

³ Daisy argues that during the encounter with Officer Cress, the car was stationary and "[t]here is no proof that the child was not restrained by a seatbelt when mother was driving." She ignores the fact that she was cited for not properly restraining K.S. while she was driving.

jurisdiction and take steps necessary to protect the child.” (*In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1383.) Officer Stallworth poignantly highlighted the risk that existed here: “ ‘I believe [Daisy] will continue to use narcotics and place her and her child into potentially dangerous situations. I have a severe concern for the safety of [K.S.], however, I have not observed a full violation of the penal code sections covering child abuse or endangerment. Based on my past contacts with [Daisy] I believe that if her narcotics use continues, her child will be subjected to far worse than being filthy[,] underdressed, and obligated to endure the questionable company of her sometime houseless mother.’ ”

There was also evidence Daisy was not providing for K.S.’s daily necessities, neglect that was endangering K.S.’s wellbeing. Ashley S. intervened because Daisy’s neglect was evident from the fact that K.S. was dirty, hungry, smelly, and dressed in ill-fitting clothes. Further, Daisy was not ensuring K.S.’s regular attendance at school. Ashley had been helping get K.S. to school, but Daisy began resisting her help, falsely claiming she had sent K.S. to live with her father out of state. School officials reported that K.S. had not attended school for approximately a month and half, and multiple people—Officer Lamb, Ashley, school employee Cather—were concerned Daisy was attempting to hide her.

Daisy also had a long history of failing to provide adequate shelter for K.S. While the family was staying in a hotel on the day K.S. was taken into protective custody, there was no indication Daisy had a sustainable plan for providing proper housing for her and her child, especially given the history of inadequate housing, from uninhabitable properties with hypodermic needles strewn about to couch surfing to living in a junk-filled car. (See *In re Kadence P.*, *supra*, 241 Cal.App.4th at pp. 1383–1384 [“The court may consider past events in deciding whether a child currently needs the court’s protection. [Citation.] A parent’s ‘ “[p]ast conduct may be probative of current conditions” if there is reason to believe that the conduct will continue’ ”].) K.S. was at risk of harm from the family’s chronically hazardous and inadequate housing situation.

Finally, Daisy had maintained her relationship with William and had left K.S. alone with him in a hotel room despite that Daisy herself had obtained a domestic violence restraining order against him. Daisy objects that there was no evidence of domestic violence between her and William since termination of the 2017 dependency proceeding. This is inconsequential. The fact is that she obtained the restraining order to protect them from William's violence, the 2017 dependency proceeding was dismissed in part due to her representation that she no longer had contact with him, and the restraining order remained in place.

Daisy's objection to the jurisdictional findings is essentially twofold. She asserts that "[t]he evidence presented by the Department was based almost entirely on anonymous hearsay," which deprived her of due process because she could not cross-examine these unknown witnesses against her. Her argument refers to statements by unidentified individuals who made the various neglect referrals to the Department. The claim is factually inaccurate, however: as detailed above, the evidence supporting the jurisdictional findings included statements by social worker Arche, K.S., the foster parent, Ashley S., principal Malkus, school employee Cather, and the various law enforcement officers identified by name in the Department's jurisdiction report. The witnesses against Daisy were thus known, and she was afforded an opportunity to confront them at a contested jurisdictional hearing. (See *In re George G.* (1977) 68 Cal.App.3d 146, 156–157 [due process is satisfied where parent is given the opportunity to call and cross-examine persons whose statements are contained in the report]; *In re Matthew P.* (1999) 71 Cal.App.4th 841, 849–851.)

Alternatively, Daisy objects that, according to the Welfare and Institutions Code, the court's findings could not be based on the hearsay statements in the jurisdictional report. She acknowledges that such statements are admissible at the jurisdictional hearing as an exception to the hearsay rule but contends that, pursuant to section 355, jurisdiction could not be based *solely* on those hearsay statements. She is incorrect that section 355 precluded a finding of jurisdiction here.

Section 355, subdivision (b) provides that the Department's report and the hearsay statements contained therein "constitute[] competent evidence upon which a finding of jurisdiction pursuant to Section 300 may be based" (Accord, *In re Malinda S.* (1990) 51 Cal.3d 368, 382.) Pursuant to section 355, subdivision (c)(1), however, if a parent timely objects to admission of specific hearsay evidence contained in the report, the "evidence shall not be sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based," unless the Department establishes that the statements fall into one of four enumerated categories set forth in subdivisions (c)(1)(A) through (D). Those categories are: (A) the hearsay would be admissible in any civil or criminal proceeding under any statutory or decisional exception to the prohibition against hearsay; (B) the hearsay declarant is a minor under 12 years of age who is the subject of the jurisdictional hearing; (C) the hearsay declarant is of a certain occupation, including a peace officer or a social worker; and (D) the declarant is available for cross-examination.

Daisy's counsel made no objection to the hearsay in the report. At the jurisdictional hearing, her counsel did state she was going to "just object and submit," but it is clear from the context that this was not intended as an objection to the hearsay in the jurisdictional report. Absent an objection to the hearsay statements, the statements were competent evidence upon which the jurisdictional findings could be based.

Daisy Has Not Demonstrated She Received Ineffective Assistance of Counsel

To prevail on a claim for ineffective assistance of counsel in a dependency proceeding, the parent must demonstrate "that counsel failed to act in a manner to be expected of reasonably competent attorneys practicing in the field of juvenile dependency law," and "that the claimed error was prejudicial." (*In re Kristin H.* (1995) 46 Cal.App.4th 1635, 1667–1668.) Daisy contends her trial counsel failed to provide competent representation by failing to object to the hearsay statements in the jurisdictional report. However, where "there was no sound legal basis for objection, counsel's failure to object to the admission of the evidence cannot establish ineffective assistance." (*People v. Cudjo* (1993) 6 Cal.4th 585, 616; see also *People v. Thompson*

(2010) 49 Cal.4th 79, 122 [no ineffective assistance of counsel where counsel did not make meritless motion].) That was the case here, as the hearsay statements fell in the section 355, subdivision (c)(1) categories and were therefore sufficient by themselves to support jurisdiction. Specifically, the statements by Arche and the law enforcement officers fell in category (c)(1)(C), which includes statements by a peace officer or a social worker. As to other witnesses such as Ashley, the school employees, and the foster parent, there is nothing to suggest they were unavailable for cross-examination at the jurisdictional hearing and their statements would thus have fallen into category (c)(1)(D). Lastly, K.S. was a minor under 12 years of age and was the subject of the jurisdictional hearing, and her statements were thus sufficient under category (c)(1)(B). Any objection would thus have been unwarranted.

Daisy largely ignores these various witnesses, focusing primarily on K.S. and arguing her statements were insufficient because there was no attempt to assess her truth competence and “[h]er young age alone raises the question of her truth-competence.” However, there is no competency requirement for the admissibility of a dependent child’s hearsay statements contained in the Department’s report. (*In re Lucero L.* (2000) 22 Cal.4th 1227, 1231, 1244–1249.) Where the child is truth-incompetent, however, the child’s hearsay statements “may not be relied on solely as a basis for a jurisdictional finding unless the court finds that they show special indicia of reliability.” (*Id.* at p. 1231.) Because the juvenile court’s jurisdictional findings here did not rely *solely* on K.S.’s statements in the jurisdictional report, the court did not need to assess her truth competence. (See also *In re I.C.* (2018) 4 Cal.5th 869, 892–893.)

The Disposition Order Was Proper

Daisy also seeks reversal of the dispositional order, arguing that if we “reverse[] and vacate[] the jurisdictional findings and orders under section 300, then the subsequent dispositional orders must be reversed as well as the court would not have jurisdiction to ma[k]e those orders.” This argument necessarily fails since we affirm the jurisdictional findings and orders.

Daisy Has Not Demonstrated Inadequate Compliance with the Notice Requirements of ICWA

In her final argument, Daisy challenges the juvenile court's compliance with the notice requirements of ICWA, claiming notice "was absent in this case . . . and that the court and the Department both failed to fulfill their affirmative and ongoing duties of inquiry as to the status of the child as an Indian Child." Again, this argument is meritless.

ICWA, a federal statute applying to all child custody proceedings involving an Indian Child, imposes a mandatory duty on the social services agency "seeking the foster care placement of, or termination of parental rights to, an Indian child [to] notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and their right of intervention." (25 U.S.C. § 1912(a); 25 C.F.R. § 23.103(a), (c) (2019); Cal. Rules of Court, rule 5.480; *In re Jennifer A.* (2002) 103 Cal.App.4th 692, 699–700.) This duty is an ongoing one. (§ 224.2, subd. (a).)

The juvenile court here had twice found that ICWA did not apply to this family, first in a dependency proceeding in which Daisy was the subject and again in the 2017 dependency proceeding in which K.S. was the subject and after the Department had sent the notices required by ICWA. Daisy apparently did not contest either of those findings. At no time was the Department or the court provided any information suggesting that those findings were incorrect or that either parent had additional information about potential Native American ancestry. Daisy provides no authority suggesting that absent additional information regarding the family's Native American ancestry, the court could not rely on the determinations made in two previous dependency proceedings that ICWA does not apply to this family.

In the absence of additional information that would trigger further notice under the court's ongoing duty, we conclude the trial court's finding that ICWA did not apply was supported by the record.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

Richman, J.

We concur:

Kline, P. J.

Stewart, J.

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